CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 31 **MAY 7, 1997** **NO. 19**

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 133

(T.D. 97–30)

RIN 1515–AC09

DISPOSITION OF EXCLUDED ARTICLES PURSUANT TO THE ANTICOUNTERFEITING CONSUMER PROTECTION ACT

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to implement section 8 of the Anticounterfeiting Consumer Protection Act of 1996 (ACPA), which was enacted by Congress to protect consumers and American businesses from counterfeit copyrighted and trademarked products. Section 8 of the ACPA concerns the disposition of excluded articles and eliminates a statutory provision that allowed infringing imported goods to be returned to the country of export whenever it is shown that the importer had no reasonable grounds for believing his or her acts constituted a violation of law. The statutory amendment now requires government officials to destroy such goods. The regulatory change reflects the statutory amendment and is designed to help Customs fight counterfeiting more effectively.

EFFECTIVE DATE: May 22, 1997.

FOR FURTHER INFORMATION CONTACT: John Atwood, Intellectual Property Rights Branch, Office of Regulations and Rulings, (202)482–6960.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Finding that counterfeit products cost American businesses an estimated $200 billion each year worldwide, Congress enacted the Anticounterfeiting Consumer Protection Act of 1996 (ACPA) to make sure that Federal law adequately addresses the scope and sophistication of modern counterfeiting. The provisions of the ACPA are designed to pro-

vide important weapons in the fight against counterfeiters. On July 2, 1996, the President signed the ACPA into law (Pub.L. 104–153, 110 Stat. 1386).

The ACPA contains 13 substantive sections, which will be implemented in several Federal Register documents. This document concerns section 8 of the ACPA, which amends title 17 of the United States Code (17 U.S.C. 603(c)), which concerns the enforcement of anti-counterfeiting laws and disposition of excluded articles. The amendment of section 603(c) removes a provision that allowed infringing imported goods to be returned to the country of export whenever it is shown that the importer had no reasonable grounds for believing his or her acts constituted a violation of law. By eliminating this provision in section 603(c), government officials are now required to destroy such goods.

The provisions of section 603(c) are provided for at §§ 133.42(c), 133.44(a), and 133.47 of the Customs Regulations (19 CFR 133.42(c), 133.44(a), and 133.47). Accordingly, these regulatory provisions are amended by removing the language which allows for the return of seized infringing merchandise to the importer or country of export.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as these amendments merely conform the Customs Regulations to existing law as discussed above, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, this document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

List of Subjects in 19 CFR Part 133

Copyrights, Counterfeit goods, Customs duties and inspection, Imports, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures, Trademarks, Trade names, Unfair competition.

Amendment to the Regulations

For the reasons stated above, part 133 of the Customs Regulations (19 CFR part 133) is amended as set forth below:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The general authority citation for part 133 continues to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * * * *

2. In § 133.42, the third sentence of paragraph (c) is amended by removing the words ", unless the article may be returned to the country of export as provided in § 133.47".

3. In § 133.44, the first sentence of paragraph (a) is amended by removing the word "either" and the words "or, if the conditions prescribed by § 133.47 are met, permit the importer to return the article to the country of export". In the last sentence, the words "In either event, the" are removed and the word "The" is added in their place.

4. Section 133.47 is removed.

SAMUEL H. BANKS,
Acting Commissioner of Customs.

Approved: March 24, 1997.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, April 22, 1997 (62 FR 19492)]

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19 CFR Part 12

(T.D. 97–31)

RIN 1515–AC14

ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIAL FROM CANADA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the imposition of import restrictions on certain archaeological and ethnological material of Canada's native peoples and certain underwater archaeological material. These restrictions are being imposed pursuant to an agreement between the United States and Canada which has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document also contains the Designated List of Archaeological and Ethnological Material which describes the articles to which the restrictions apply.

EFFECTIVE DATE: April 22, 1997.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: Donnette Rimmer, Intellectual Property Rights Branch (202) 482–6960.

Operational Aspects: Louis Alfano, Commercial Enforcement, Office of Field Operations (202) 927–0005.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub.L. 97–446, 19 U.S.C. 2601 *et seq.*)("the Act"). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations from which they originate, but also to greater international understanding of mankind's common heritage. The U.S. is, to date, the only major art importing country to implement the 1970 Convention.

During the past several years, import restrictions have been imposed on an emergency basis on archaeological and cultural artifacts of a number of signatory nations as a result of requests for protection received from those nations.

Import restrictions are now being imposed as the result of a bilateral agreement entered into between the United States and Canada. This agreement was signed on April 10, 1997, under the authority of the provisions of 19 U.S.C. 2602. Accordingly, § 12.104g(a) of the Customs Regulations is being amended to indicate that restrictions have been imposed pursuant to the agreement between the United States and Canada.

This document contains the Designated List of Archaeological and Ethnological Material representing the cultures of the native peoples of Canada which are covered by the agreement. Importation of articles on this list is restricted unless the articles are accompanied by an appropriate export certification issued by the Government of Canada.

In reaching the decision to recommend the application of import restrictions, the Deputy Director, USIA, determined, pursuant to the requirements of the Act, that with respect to:

1) *Inuit (Eskimo) archaeological and ethnological material*, that the cultural patrimony of Canada is in jeopardy from the pillage of archaeological and ethnological material from the Inuit which includes the following periods/cultures: Paleo-Eskimos (2000–500 B.C.), Dorset (500 B.C.–1000 A.D.), Thule (1000–1800 A.D.), and the historic period beginning approximately 1800 A.D.; and originates in the geographic region extending from the Alaskan border in the west to Baffin Island in the east and as far southeast as the coast of Labrador, and south to the treeline, and falling within the present day area defined by the Yukon and Northwest Territories and the provinces of Quebec and Newfoundland-Labrador; and with respect to

2) *Subarctic Indian ethnological material*, that the cultural patrimony of Canada is in jeopardy from the pillage of ethnological material of the Subarctic Indian which covers the period from approximately the 17th century and which material dates from the 17th century A.D.; and which material originates in the geographic region extending from the Alaskan border in the west to Labrador in the east, from the tundra extending south encompassing large areas of the Yukon and Northwest Territories and including parts of all provinces except New Brunswick, Nova Scotia and Prince Edward Island on the east coast; and, with respect to

3) *Northwest Coast Indian archaeological and ethnological material*, that the cultural patrimony of Canada is in jeopardy from the pillage of archaeological and ethnological material of the Northwest Coast Indian beginning from approximately 10,000 B.C. for archaeological material and since approximately 1800 A.D. for ethnological material; and originates in the geographic region extending in Canada along the coast of British Columbia (including offshore islands) from the Alaskan border in the north to the southern tip of Vancouver Island; and, with respect to

4) *Plateau Indian archaeological material*, that the cultural patrimony of Canada is in jeopardy from the pillage of archaeological material of the Plateau Indian dating from approximately 6,000 B.C.; and originates in the southern part of the interior region, between the coastal mountain range and the Rocky Mountains, in the province of British Columbia; and, with respect to

5) *Plains Indian ethnological material*, that the cultural patrimony of Canada is in jeopardy from the pillage of ethnological material (dating from approximately 1700 A.D.) of the Plains Indian; and originates in Canada in the region extending eastward from the Rocky Mountains, southward from the North Saskatchewan River to the Canada/U.S. border, and encompassing portions of the provinces of Alberta, Saskatchewan and Manitoba; and, with respect to

6) *Woodlands Indian archaeological and ethnological material*, that the cultural patrimony of Canada is in jeopardy from the pillage of archaeological (dating from approximately 9,000 B.C. to approximately 1550 A.D.) and ethnological material (dating from approximately the mid-16th century) of the Woodlands Indian; originating in an area south of the boreal forest in eastern Canada from the Great Lakes to the east coast; and, with respect to

7) *Underwater archaeological material*, that the cultural patrimony of Canada is in jeopardy from the pillage of underwater archaeological material found (at historic shipwrecks and other underwater historic sites) in the inland waters of Canada as well as the Canadian territorial waters of the Atlantic, Pacific and Arctic Oceans, and the Great Lakes.

DESIGNATED LIST OF ARCHAEOLOGICAL ARTIFACTS AND ETHNOGRAPHIC MATERIAL CULTURE OF CANADIAN ORIGIN AND CERTAIN UNDERWATER ARCHAEOLOGICAL MATERIAL RESTRICTED FROM IMPORTATION INTO THE UNITED STATES

Pursuant to an agreement between the United States and Canada, the following list contains descriptions of the cultural materials for which the United States imposes import restrictions under the Convention on Cultural Property Implementation Act (P.L. 97–446), the legislation enabling implementation of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

DEFINITIONS

For purposes of this list and in accordance with the United States Cultural Property Implementation Act and Canada's Cultural Property Export and Import Act, the following definitions are applicable:

"Archaeological artifact" means an object made or worked by a person or persons and associated with historic or prehistoric cultures that is of cultural significance and at least 250 years old and normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water.

"Ethnographic material culture" means an object that was made, reworked or adapted for use by a person who is an Aboriginal person of Canada (e.g., the product of a tribal or non-industrial society), is of ethnological interest and is important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development or history of that people. The terms ethnographic material culture and ethnological material are used interchangeably.

"Aboriginal person of Canada" means a person of Indian or Inuit ancestry, including a Métis person, or a person recognized as being a member of an Indian, Inuit or Métis group by the other members of that group, who at any time ordinarily resided in the territory that is now Canada.

General Restrictions

Pursuant to Canada's Cultural Property Export and Import Act, certain archaeological artifacts and ethnographic material are subject to export control. Export permits are available at designated offices of Canada Customs. Information about export controls is available from Movable Cultural Property, Department of Canadian Heritage by telephone at 819–997–7761.

In the absence of export permits where required, United States import restrictions will apply to the following Aboriginal cultural groups in Canada: Inuit (Eskimo) archaeological and ethnological material; Subarctic Indian ethnological material; Northwest Coast Indian archaeological and ethnological material; Plateau Indian archaeological material; Plains Indian ethnological material; Woodlands Indian archaeological and ethnological material. Such import restrictions will also apply to underwater archaeological material found at historic shipwrecks and other underwater historic sites in the inland waters of Canada as well as the Canadian territorial waters of the Atlantic, Pacific and Arctic Oceans, and the Great Lakes.

Below are representative lists, subject to amendment, of objects covered by these import restrictions.

Ethnographic Material Culture

Below is a representative list, subject to amendment, of objects of ethnographic material culture, organized by the primary type of material used to make the object.

In accordance with Canadian law, restrictions only apply to ethnological material listed below which was made, reworked or adapted for use by an **Aboriginal person of Canada** who is no longer living, which is greater than 50 years old, and which has a fair market value in Canada of more than $3,000 (Canadian).

Ethnographic material from the following Aboriginal cultural groups is included in this list and is subject to United States import restrictions: Inuit (Eskimo); Subarctic Indian; Northwest Coast Indian; Plains Indian; and Woodlands Indian.

Ethnographic material from the following cultural group is excluded from this list and is not subject to United States import restrictions: Plateau Indian.

This section is organized by the primary type of material used to make the object.

I. Animal and Bird Skins (Hide), Fur and Feathers

A. Hunting and fishing equipment:
Quivers (arrow cases);
Rifle scabbards/holsters and bandoliers (ammunition belts); and
Kayaks, canoes and other boats made of skin or hide.

B. Horse trappings:
Saddle bags and throws, blankets, etc.

C. Clothing (often decorated with beads, buttons, hair, fur, shells, animal teeth, coloured porcupine quills):
Belts, dresses, jackets, leggings, moccasins, robes, shirts, vests, parkas;
Yokes, beaded;
Headdresses, decorated with feathers, hair, fur, and/or horn; and
Ornaments, jewelry and other accessories (including neck-laces often with hide-covered stone).

D. Other sewn objects:
Cradle boards and covers;
Bags, pouches;
Rugs; and
Tipi covers (with or without paint or other decoration).

E. Skins with applied writing, drawing, or painted decoration, design or figures.

F. Musical instruments:
Drums.

G. Prepared Skins of Birds and mammals used in sacred bundles or as wrappings.

H. Parfleches (all-purpose hide containers, folded and/or sewn, with or without painted or other applied decoration).

II. Wood, Bark, Roots, Seeds

A. Weapons and hunting equipment:
Tomahawks;
Snowshoes;
Clubs;
Sheathes for knives;
Paddles; and
Canoes and other boats (carved wood, birchbark).

B. Containers:
Baskets, pouches, bags, mats; and
Boxes and chests (bark, root, wood), often elaborately carved or painted.

C. Domestic utensils and tools:
Bowls;
Spoons, ladles;
Trays;
Spindle whorls (small, usually circular flywheels to regulate textile or other spinning);
Adzes (axe-like tool for trimming and smoothing wood) and other woodworking tools;
Bark beaters; and
Mat creasers.

D. Furniture:
Chairs, backrests, settees (seat or small bench with back); and
Mats.

E. Carved models:
Animal and human figurines; and
Miniature canoes and totem poles.

F. Toys, dolls and games.

G. Musical instruments:
Drums;
Whistles, flutes, recorders; and
Rattles, sometimes elaborately carved in animal or human form and painted or otherwise decorated.

H. Ornaments and accessories:
Pendants, chains and other jewelry;
Combs; and
Birchbark belts.

I. Hats (spruce root, wood, bark, woven grass).

J. Ceremonial objects:
Pipes and pipestems;
Masks and headdresses (wood or cornhusk, often complexly carved and painted, usually resembling animals, or human faces, sometimes contorted);
Rattles (see description above in G.);
Bowls;
Staffs, standards (ceremonial poles, in some cases used to support banners or flags); and
Birchbark scrolls with carved pictographic designs or figures.

K. Totem poles, house posts and wall panels (usually carved and/or painted).

III. **Bone, Tooth, Shell, Horn, Ivory, Antler** (items made from, or decorated with)

A. Carved hunting and fishing equipment (such as carved bow handles).

B. Weapons and tools:
Clubs;
Needles and sewing kits; and
Shuttles (small instrument containing a reel or spool or otherwise holding thread or other similar material during weaving or lace-making).

C. Carved figurines:
Representations of people, fish, animals.

D. Ornaments and other accessories:
Combs;
Beads and pendants; and
Snow goggles and visors.

E. Ceremonial objects:
Masks (see description in II J.); and
Amulets and charms.

F. Miniatures and game pieces:
Especially cribbage boards.

G. Pipes.

H. Musical instruments:
Whistles.

IV. Stone, Argillite Stone, Amber

A. Hunting and fishing equipment:
Bola and bola weight (weapon consisting of long cord or thong with stone balls at the end);
Blubber pounder;
Harpoon head;
Net weights; and
Toggles (rod, pin or bolt used with rope to tighten it, to make an attachment or prevent slipping).

B. Tools:
Snow knives; and
Ulus (crescent-shaped knife with small handle on side).

C. Domestic utensils:
Plates, platters, bowls;
Lamps (bowl or trough-shaped) and wick trimmers;
Boxes; and
Hearthstone.

D. Ornaments and other accessories:
Especially incised pendants.

E. Ceremonial objects:
Masks; and
Seated human and animal figure bowls.

F. Pipes:
Argillite, catlinite and steatite, often ornately carved with animals and human designs.

G. Carved figurines:
Especially carved argillite figural groups and miniature totem poles.

V. Porcupine Quills (items made from, or ornamented with)

A. Drinking tubes; and

B. Ornamentation for clothing and other sewn objects, usually colored.

VI. Textiles (cotton, wool, linen, canvas)

A. Decorated cloth panels and ceremonial dance curtains;

B. Garments and accessories:
Belts, dresses, hats/hoods, jackets, leggings, moccasins, robes, shirts, vests, aprons, tunics;
Blankets or capes, often decorated with buttons, quillwork, beads, shells; and
Pouches and bags.

C. Wrappings for ceremonial objects;

D. Canvas tipis and tipi models; and

E. Woven blankets (incl. Chilkat blankets of woven mountain goat wool and cedar bark, with elaborate coloured designs).

VII. Metals (copper, iron, steel, gold, silver, bronze)

A. Weapons and shields:
Daggers.

B. Hunting and fishing equipment:
Fishing lures.

C. Tools:
Snow knives; and
Ulus (see description under IV B.).

D. Clothing and hair ornaments;

E. Ceremonial objects:
Masks;
Rattles, charms; and
Coppers (large flat copper plates with beaten or incised decoration).

VIII. Clay

A. Figurines (people, fish, animals);

B. Pipes; and

C. Pottery vessels and containers such as bowls or jars.

IX. Beads (glass, clay, shell, bone, brass) (items decorated with)

A. Horse gear (bridles, saddle bags, decorative accessories);

B. Bags, pouches, parfleches (see description in I H.), and knife sheaths (decorative);

C. Clothing: belts, dresses, leggings, moccasins, shirts, vests, jackets, hoods, mantles/robes;

D. Musical instruments:
Drums; and

E. Ceremonial/sacred amulets and objects

X. Hair (items decorated with, or made from human or animal hair) Ornamentation used on clothing and other sewn objects, such as pouches, ceremonial objects.

ARCHAEOLOGICAL ARTIFACTS

Below is a representational list, subject to amendment, of archaeological artifacts recovered from the soil of Canada, the territorial sea of Canada or the inland or other internal waters of Canada.

The Government of Canada, in accordance with Canadian law, will not restrict the export of archaeological artifacts recovered less than 75 years after their loss, concealment or abandonment. United States import restrictions, however, only will apply to archaeological material that is at least 250 years old.

Archaeological artifacts from the following Aboriginal cultural groups are included in this list: Inuit (Eskimo); Northwest Coast In-

dian; Plateau Indian; Woodlands Indian, and underwater archaeological material from historic shipwrecks and other underwater historic sites.

Archaeological artifacts from the following Aboriginal cultural groups are excluded from this list: Subarctic Indian, Plains Indian.

I. Aboriginal archaeological artifacts

A. Animal and Bird Skins (Hide), Fur and Feathers:
Quivers (arrow cases);
Kayaks, canoes and other boats made of skin or hide;
Clothing, ornaments and other accessories;
Bags, pouches; and
Drums.

B. Wood, Bark, Roots, Seeds:
Snowshoes;
Knives sheathes;
Canoes and paddles (wood);
Containers (wood baskets, pouches, boxes, chests);
Domestic utensils (wood bowls, spoons, woodworking tools);
Carved models, toys and games;
Musical Instruments (wood drums, flutes, whistles, rattles); and
Ceremonial objects (wood pipes, masks, rattles, bowls).

C. Bone, Tooth, Shell, Horn, Ivory, Antler:
Carved hunting and fishing equipment;
Weapons and tools (clubs, needles, shuttles);
Carved figurines (representations of people, fish, animals);
Ornaments and other accessories (combs, beads and pendants, snow goggles and visors);
Masks and other ceremonial objects;
Miniatures and game pieces (including cribbage boards);
Pipes; and
Whistles.

D. Stone, Argillite Stone, Amber:
Hunting and fishing equipment (including harpoon or spear heads, net weights, toggles, bola weights);
Tools (snow knives and ulus—see description in Ethnological Material);
Plates, platters, bowls;
Lamps (bowl or trough-shaped);
Boxes;
Ornaments and other accessories; Masks;
Pipes; and
Carved figurines.

E. Porcupine Quills (items made from, or decorated with):
Drinking Tubes;
Ornamentation for clothing, usually coloured;
Pouches, bags; and
Ceremonial objects.

F. Textiles (wool, cotton, linen, canvas):
Garments (see description under Ethnological Material);
Blankets, often decorated with buttons, quillwork, beads, shells;
Pouches, bags; and
Wrappings for ceremonial objects.

G. Metals (copper, iron, steel, gold, silver, bronze):
Weapons and shields;
Hunting and fishing equipment, including fishing lures;
Tools (including snow knives and ulus—see description under Ethnological Material);
Clothing and hair ornaments;
Ceremonial objects, especially coppers (see description under Ethnological Material);

H. Clay:
Figurines (people, fish, animals);
Pipes; and
Pottery vessels and containers such as bowls or jars.

I. Beads (glass, clay, shell, bone, brass) (items decorated with).

J. Hair (ornamentation of human or animal hair used on clothing and other sewn objects).

II. Non-aboriginal archaeological artifacts: Historic Shipwrecks

A. General Ship's Parts (wood and metal):
Anchor;
Wheel;
Mast;
Riggings (block and pulley; deadeye; lanyard);
Bell;
Hull and fittings (rudder, keel, keelson, futtock, fasteners, iron supports);
Figurehead and other carved vessel decoration;
Windlass and capstan (winches);
Wood of the ship;
Furniture;
Porthole;
Ballast (pig iron) (metal weight carried to stabilize ship);
Pump assembly (plunger, working barrel, piston);
Riggings (cables); and
Heating, lighting and plumbing fixtures.

B. Navigational instruments:
Compass;
Astrolabe or sextant (instruments for calculation of navigation by stars);
Telescope;
Nocturnal;
Sounding leads;
Cross staff or back staff;
Dividers;

Lanterns; and
Binnacle (the case enclosing a ship's compass).

C. Armaments:
Cannon, carronade (type of short, light cannon), mortars;
Cannonshot (balls, chair and bar);
Arms (guns, knives, pikes, cutlasses, scabbards, swords);
Gun carriage components;
Musket shot (metal balls); and
Bandoliers (cartridge straps).

D. Tools and wares:
Carpenter's tools;
Sail making tools;
Rope making tools;
Medicinal wares;
Galley ware (cooking caldron, crockery, glassware, beverage bottles, cutlery, treen, stoves);
Caulker tools;
Surgeon tools;
Chaplain tools;
Fishing supplies (lead sinkers, hooks, barrels, try works);
Cooper's tools; and
Blacksmith's tools.

E. Ship's Cargo:
Raw metal (iron, copper, bronze, lead);
Wood;
Ceramics;
Glassware (fine glass decanters);
Trade beads;
Containers (casks, baskets); and
Stone (for building or ballast).

F. Personal Goods Found on Ships:
Jewelry (gold, silver, stone);
Coins;
Gaming pieces (dice);
Buckles and buttons;
Chests;
Combs;
Pipes;
Religious items;
Timepieces;
Bedding, clothing and other textiles; and
Shoes.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE

Because this amendment is being made in response to a bilateral agreement entered into in furtherance of the foreign affairs interests of the United States, pursuant to § 553(a)(1) of the Administrative Procedure Act, no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is both impracticable and contrary to the public interest.

REGULATORY FLEXIBILITY ACT

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in E.O. 12866.

DRAFTING INFORMATION

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 12

Customs duties and inspections, Imports, Cultural property

AMENDMENT TO THE REGULATIONS

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—[AMENDED]

1. The general authority and specific authority citation for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * * * *

Sections 12.104–12.104i also issued under 19 U.S.C. 2612.

2. In § 12.104g, paragraph (a), the listing of agreements imposing import restrictions on described articles of cultural property of State Parties is amended by adding "Canada" in appropriate alphabetical order under the column headed "State Party", and adding adjacent to the listing of "Canada" the description "Archaeological Artifacts and Ethnological Material Culture of Canadian Origin" under the column headed "Cultural Property" and the reference "T.D. 97–31" under the column headed "T.D. No."

GEORGE J. WEISE,
Commissioner of Customs.

Approved: April 9, 1997.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, April 22, 1997 (62 FR 19488)]

U.S. Customs Service

General Notices

PROPOSED COLLECTION; COMMENT REQUEST

DRAWBACK ENTRY COVERING REJECTED AND SAME CONDITION MERCHANDISE

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Drawback Entry Covering Rejected and Same Condition Merchandise. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 23, 1997, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide informa-

tion. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Drawback Entry Covering Rejected and Same Condition Merchandise

OMB Number: 1515–0020

Form Number: Customs Form 7539

Abstract: This collection is used by an importer, filer, or any party at interest to establish the eligibility of Rejected and Same Condition Merchandise, substitution of Same Condition Merchandise or Destroyed Merchandise for return of duties paid. This collection is used by the claimant to provide the necessary information for Customs to approve the drawback claim.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 2,100

Estimated Time Per Respondent: 2 hours

Estimated Total Annual Burden Hours: 22,000

Estimated Total Annualized Cost on the Public: N/A

Dated: April 16, 1997.

J. EDGAR NICHOLS,
Information Services Group.

[Published in the Federal Register, April 23, 1997 (62 FR 19857)]

PROPOSED COLLECTION; COMMENT REQUEST

SERIALLY NUMBERED SUBSTANTIAL HOLDERS OR CONTAINERS

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Serially Numbered Substantial Holders or Containers. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 23, 1997, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Serially Numbered Substantial Holders or Containers
OMB Number: 1515–0101
Form Number: N/A
Abstract: The marking is used to provide for duty free entry of holders or containers which were manufactured in the United States and exported and returned without having been advanced in value or improved in condition by ant process or manufacture. The regulations provide for duty free entry of holders or containers of foreign manufacture if duty has been paid before.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses, Institutions
Estimated Number of Respondents: 20
Estimated Time Per Respondent: 4.5 hours
Estimated Total Annual Burden Hours: 90
Estimated Total Annualized Cost on the Public: N/A

Dated: April 16, 1997

J. EDGAR NICHOLS,
Information Services Group.

[Published in the Federal Register, April 23, 1997 (62 FR 19856)]

PROPOSED COLLECTION; COMMENT REQUEST

DECLARATION FOR FREE ENTRY OF UNACCOMPANIED ARTICLES

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration for Free Entry of Unaccompanied Articles. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 23, 1997, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration for Free Entry of Unaccompanied Articles
OMB Number: 1515–0053
Form Number: N/A
Abstract: The Declaration for Free Entry of Unaccompanied Articles, Customs Form 3299, is prepared by the individual or the broker acting as agent for the individual, or in some cases, the Customs officer. It serves as a declaration for duty-free entry of merchandise under one of the applicable provisions of the tariff schedule.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 10,000
Estimated Time Per Respondent: 10 minutes
Estimated Total Annual Burden Hours: 25,000
Estimated Total Annualized Cost on the Public: N/A

Dated: April 16, 1997.

J. EDGAR NICHOLS,
Information Services Group.

[Published in the Federal Register, April 23, 1997 (62 FR 19855)]

PROPOSED COLLECTION; COMMENT REQUEST

APPLICATION FOR ALLOWANCE IN DUTIES

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Allowance in Duties. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 23, 1997, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application for Allowance in Duties
OMB Number: 1515–0022
Form Number: Customs Form 4315
Abstract: This collection is required by the Customs Service in instances of claims of damaged or defective merchandise on which an allowance in duty is made in the liquidation of the entry. The information is used to substantiate importers claims for such duty allowances.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 12,000
Estimated Time Per Respondent: 8 minutes
Estimated Total Annual Burden Hours: 1,600
Estimated Total Annualized Cost on the Public: N/A

Dated: April 16, 1997.

J. EDGAR NICHOLS,
Information Services Group.

[Published in the Federal Register, April 23, 1997 (62 FR 19855)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, April 22, 1997.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

REVOCATION OF CUSTOMS RULING LETTER RELATING TO THE POST-PRODUCTION USE OF MANUFACTURED CONTAINERS UNDER 19 U.S.C. 1313(a)

ACTION: Notice of revocation of a manufacturing drawback ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) this notice advises interested parties that Customs is revoking a ruling pertaining to the post-production use of manufactured containers under 19 U.S.C. 1313(a). Notice of the proposed revocation was published February 26, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 9.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after July 7, 1997.

FOR FURTHER INFORMATION CONTACT: Larry Ordet, Entry and Carrier Rulings Branch, International Trade Compliance Division, (202) 482–7028.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On February 26, 1997, Customs published a notice in the CUSTOMS BULLETIN, Volume 31, Number 9, proposing to revoke Headquarters Ruling (HQ) 225658, dated January 17, 1995, which concerned the manufacture of bottles from imported plastic resin. The manufactured bottles were filled by a filling company with locally available liquids (e.g., water, soda, juice). The filled bottles were then exported by the filling company. We held that the filling of the manufactured bottles by the filling company for exportation was not a permissible post-production use under 19 U.S.C. 1313(a), and therefore, the articles were not eligible for drawback. The notice indicated that Customs intended to revoke

HQ 225658 to reflect that the filling of manufactured bottles by someone other than the manufacturer is a "use" under 19 U.S.C. 1313(a). Seven comments were received. The essence of the comments and our responses follow:

Comment:

The manufactured bottles are not "used" when filled by the filling company.

Response:

Although most commenters argued that the bottles were not "used" for their intended purpose when filled by the filling company, they disagreed as to when a prohibited use would occur. Some argued that the bottles were not used until transported, while others argued that they were not used until the bottles were opened and the transported liquid consumed. We disagree.

The manufactured bottles have several uses, including the transportation of the liquid to the consumer. However, the bottles are also used to store the liquid, which begins as soon as the containers are filled. If we were to find that the filling of a container was not a use, we would be ignoring Congressional treatment of imported containers found in 19 U.S.C. 1313(q), wherein Congress provided that imported packaging materials would be drawback eligible under specified conditions. More importantly, Congress referred to the use of these materials as a use that would preclude drawback eligibility but for section 1313(q).

The predecessor to section 1313(q) was found in 19 U.S.C. 1313(j)(4), which was added by the Act of October 30, 1984, Pub. L. 98–573, 98 Stat. 2973. The legislative history for section 1313(j)(4) clearly states that the section was intended as "an exception to the prohibition on the 'use' of articles for which a refund of duties is sought under subsection (j) * * *." H. Rep. 98–308, 98th Cong., 1st Sess., 29–30 (1983).

Section 1313(j)(4) was added in response to our decision in C.S.D. 81–222, dated May 27, 1981, wherein we held that containers for packaging other merchandise were used for their intended purpose when they were filled following importation, and therefore, were not eligible for "same condition" drawback under 19 U.S.C. 1313(j) upon exportation. Congress agreed that imported containers were in fact used when filled in the United States, and amended 19 U.S.C. 1313 by adding section 1313(j)(4). For these containers, use in the United States was expressly acknowledged and provided for in that provision.

Section 1313(j)(4) was subsequently amended by the Act of December 8, 1993, Pub. L. 103–182, 107 Stat. 2057, to become section 1313(q). Section 1313(q) allows drawback "for dutiable packaging material **if used in the packaging** of either the dutiable imported article or its substitute article so long as that article is exported or destroyed (emphasis added)." H. Rep. 103–361, 103d Cong., 1st Sess., 130 (1993). There is no basis to treat the use of packaging materials differently under sections 1313(a), (b) or (q), except that the exception to the use prohibition applies only in the latter. Section 1313(q) is, however, inapplicable to the

situation described in HQ 225658, as the imported articles are not finished containers, but the plastic resin used in their manufacture.

Several commenters also argued that the filling of the manufactured bottles is part of a continuing manufacturing process. While this may or may not be true, 19 U.S.C. 1313(a) expressly provides that manufactured articles may not be used prior to exportation or destruction. The legislative history qualifies this use prohibition only to the extent that the prescription is "not intended to prevent a manufacturer from testing or other post-production operations." H. Rep. 103–361. In light of the express language of the statute and the legislative history, we believe that, in determining whether an action is a prohibited use of the article, we must consider who performs that action.

The manufacturer in this instance has manufactured bottles from plastic resin. If this manufacturer chose to test or fill the bottle, these actions would be permissible according to the limited exception to the use prohibition discussed in the legislative history. *See* HQ 226898, dated February 10, 1997 (wherein we held that imported glass bottles and related integral parts, such as, caps, collars, pumps and actuators, which were assembled into scent sprayers and filled with perfume by the manufacturer during the assembly process, were eligible for drawback under 19 U.S.C. 1313(a)). However, the manufacturer in the instant case did not continue the processing so as to cone within the limitation on the statutory prescription.

One commenter argued that the proposal was in conflict with our decision in C.S.D. 81–65, dated September 4, 1980. In this ruling, pro-labeled, woven, polypropylene bags were filled with tea, peas, beans, grains, etc., and then were sewn shut. These large bags were generally 50 or 100 pounds. We determined that the "sewing shut of one or both ends does not constitute a manufacture or production [under 19 U.S.C. 1313(a)] * * *." The ruling does not discuss whether the bags were used for their intended purpose when filled. Clearly, the bags were so used, us our later holding in C.S.D. 81–222 (discussed above) indicates.

Comment:

The fact that one entity combines an article manufactured from imported materials with an article manufactured by a second entity from imported materials does not preclude drawback eligibility.

Response:

We agree, except to the extent that the combination of the manufactured articles constitutes an impermissible use of either manufactured article.

Proposed section 191.25(f)(1) was cited by one commenter for the proposition that the drawback statute permits a second entity to continue the manufacturing process of another. In the instant case, the filling company, it is argued, is merely completing the manufacturing process started by the bottle manufacturer. As stated above, we do not believe such an action is permissible under section 1313(a).

Proposed section 191.25(f)(1) provides that "[m]ultiple claimants may file for [manufacturing] drawback with respect to the same export **(for example, a chemical is exported in a container, where the chemical and the container have been produced by different manufacturers under drawback conditions)** (emphasis added)." Proposed section 191.25(f)(1) is a Notice of Proposed Rulemaking (NPRM) which was published January 21, 1997, with proper notice-and-comment procedures under the Administrative Procedure Act (APA) (5 U.S.C. 551–559). *See* 62 FR 3082. One commenter correctly pointed out that the holding in proposed HQ 227276 is inconsistent with the emphasized portion of proposed section 191.25(f)(1). The container described in the regulation is used for section 1313(a) and (b) purposes when filled with the chemical.

Proposed section 191.25(f)(1) tracks the language found in 19 CFR 191.62(c), which was in effect prior to the substantive amendments to the drawback law (section 632, title VI—Customs Modernization, Public Law 103–182, the North American Free Trade Agreement Implementation Act (107 Stat. 2057), enacted December 8, 1993). These amendments, in part, permit "claims under the manufacturing drawback provisions if the articles are destroyed rather than exported * * *, [but require] that the exported articles not be used before exportation or destruction." *See* H. Rep. 103–361. As there was no use prohibition prior to the recent amendments, section 191.62(c) was correct. However, following the amendments, the highlighted portion of the proposed regulation is incorrect and will therefore be deleted. We note that the action described in the highlighted portion of proposed section 191.25(f)(1) may now be covered by 19 U.S.C. 1313(q).

Finally, one commenter states that "[t]he products being placed in these containers can only be marketed to the ultimate consumer at the retail level if placed in a container. In what other fashion would Customs suggest perfume, various liquids and powders be placed in the hands of the public? It is for this reason that ruling 2255658 [sic] should be left in tact [sic]." The holding in HQ 227276 does not prevent products, such as, perfume, liquids, etc., from being placed in the marketplace in any particular fashion. The ruling simply restricts drawback eligibility in accordance with the statute and legislative history.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking HQ 225658 to reflect that the filling of manufactured bottles is a "use" under 19 U.S.C. 1313(a), unless the legislative limitation on the statutory proscription is applicable. HQ 227276 revoking HQ 225658 ii set forth in an Attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: April 7, 1997.

WILLIAM G. ROSOFF,
Director,
International Trade Compliance Division.

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, April 7, 1997.
DRA–2–01–RR:IT:EC 227276 LTO
Category: Drawback

MR. PAUL E. SMITH
PACIFIC ALLIED PRODUCTS
Campbell Industrial Park
91–1 10 Kaomi Loop
Kapolei, HI 96707

Re: Manufacturing drawback; 19 U.S.C. 1313(a); 19 U.S.C. 1313(q); 19 CFR 191.25(f)(1); post-production use; containers; bottles; plastic resin; HQ 225659 *revoked;* HQs 225467, 226898; C.S.D. 81–65, 81–222.

DEAR MR. SMITH:

This is in reference to HQ 225658, issued to you on January 17, 1995, which concerned the availability of drawback under 19 U.S.C. 1313(a) for plastic resin used to manufacture bottles. In reviewing the scope of 19 U.S.C. 1313(a), we have determined that it is necessary to revoke HQ 225658. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), notice of the proposed revocation of HQ 225658 was published February 26, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 9.

Facts:

Pacific Allied Products ("Pacific") manufactures bottles out of imported plastic resin. The manufactured bottles are filled by a filling company with locally available liquids (e.g., water, soda, juice). The filled bottles are then exported by the filling company.

Issue:

Whether the filling of manufactured plastic bottles by someone other than the manufacturer constitutes a "use" under 19 U.S.C. 1313(a).

Law and Analysis:

In HQ 225658, we held that the filling of manufactured bottles by the filling company for exportation was not a "use" under 19 U.S.C. 1313(a). For the following reasons, we find that it is necessary to revoke this ruling.

Section 313(a), Tariff Act of 1930 (19 U.S.C. 1313(a)), as amended by section 632(a)(1) of the North American Free Trade Agreement (NAFTA) Implementation Act of 1993, provides that "[u]pon the exportation * * * of articles manufactured or produced in the United States with the use of imported merchandise, **provided that those articles have not been used prior to such exportation or destruction,** the full amount of duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties * * * (emphasis added)."

The drawback law was substantively amended by section 632, title VI—Customs Modernization, Public Law 103–182, the North American Free Trade Agreement Implementation Act (107 Stat. 2057), enacted December 8, 1993, while a definition of the term "used" was not provided in the language of the new act, the House Report 103–361, 103d Cong., let Sess., 130 (1993), states that "[w]ith respect to manufacturing drawback, the provisions prohibiting the use of items claimed under drawback are not intended to prevent a **manufacturer** from testing or other post-production operations (emphasis added)." Thus, while the statute expressly provides that the manufactured articles may not be "used" prior to exportation or destruction, the legislative history indicates that this prohibition does not extend to certain operations performed *by the manufacturer.*

In the instant case, Pacific manufactures bottles out of imported plastic resin. The manufactured bottles are provided to a filling company where they are filled with locally available liquids (e.g., water, soda, juice). The filled bottles are then exported by the filling company.

The manufacturing process ends when the manufacturer provides the manufactured bottles to the filling company. Once the bottles are so provided, the plastic resin used in their manufacture no longer qualifies for drawback under 19 U.S.C. 1313(a). The manufactured bottles are containers designed to transport various liquids. The filling of a container for its intended purpose by someone other than the manufacturer constitutes a "use" of that container. On the other hand, when a manufacturer fills a container, the manufacturing process continues until the container is filled, and the filling operation is not a "use." *See* HQ 226898, dated February 10, 1997 (wherein we held that imported glass bottles and related integral parts, such as, caps, collars, pumps and actuators, which were assembled into scent sprayers and filled with perfume by the manufacturer during the assembly process, were eligible for drawback under 19 U.S.C. 1313(a)).

Contrast the treatment of containers with our holding in HQ 225467, dated October 7, 1994, a ruling that was cited in HQ 225658. In HQ 225467, we determined that imported "cosmetic bags" were not "used" when they were filled with sample-sized cosmetic and grooming products, and were therefore eligible for drawback under 19 U.S.C. 1313(j)(1). The "cosmetic bags" are not containers. They were not designed to carry only the sample-sized products, but had additional slots for articles other than cosmetics. Moreover, the value of the bags significantly outweighed that of the samples. Thus, they were purchased because they were bags, not for the articles contained within them. Accordingly, we held that the filling of the bags with the samples was not a "use," as the bags were not being used for their intended purpose.

Seven comments were received in opposition to the CUSTOMS BULLETIN notice. Generally, the commenters argued that the manufactured bottles are not "used" when filled by the filling company, and that the fact that one entity combines an article manufactured from imported materials with an article manufactured by a second entity from imported material does not preclude drawback eligibility.

Although most commenters argued that the bottles were not "used" for their intended purpose when filled by the filling company, they disagreed as to when a prohibited use would occur. Some argued that the bottles were not used until transported, while others argued that they were not used until the bottles were opened and the transported liquid consumed. We disagree.

The manufactured bottles have several uses, including the transportation of the liquid to the consumer. However, the bottles are also used to store the liquid, which begins as soon as the containers are filled. If we were to find that the filling of a container was not a use, we would be ignoring Congressional treatment of imported containers found in 19 U.S.C. 1313(q), wherein Congress provided that imported packaging materials would be drawback eligible under specified conditions. More importantly, Congress referred to the use of these materials as a use that would preclude drawback eligibility but for section 1313(q).

The predecessor to section 1313(q) was found in 19 U.S.C. 1313(j)(4), which was added by the Act of October 30, 1984, Pub. L. 98–573, 98 State 2973. The legislative history for section 1313(j)(4) clearly states that the section was intended as "an exception to the prohibition on the 'use' of articles for which a refund of duties is sought under subsection (j) * * *." H. Rep. 96–308, 98th Cong., 1st Sess., 29–30 (1983).

Section 1313(j)(4) was added in response to our decision in C.S.D. 81–222, dated May 27, 1981, wherein we held that containers for packaging other merchandise were used for their intended purpose when they were filled following importation, and therefore, were not eligible for "same condition" drawback under 19 U.S.C. 1313(j) upon exportation. Congress

agreed that imported containers were in fact used when filled in the United States, and amended 19 U.S.C. 1313 by adding section 1313(j)(4). For these containers, use in the United States was expressly acknowledged and provided for in that provision.

Section 1313(j)(4) was subsequently amended by the Act of December 8, 1993, Pub. L. 103–182, 107 Stat. 2057, to become section 1313(q). Section 1313(q) allows drawback "for dutiable packaging material **if used in the packaging** of either the dutiable imported article or its substitute article so long as that article is exported or destroyed (emphasis added)." H. Rep. 103–361, 103d Cong., 1st Sess., 130 (1993). There is no basis to treat the use of packaging materials differently under sections 1313(a), (b) or (q), except that the exception to the use prohibition applies only in the latter. Section 1313(q) is, however, inapplicable to the situation described in HQ 225658, as the imported articles are not finished containers, but the plastic resin used in their manufacture.

Several commenters also argued that the filling of the manufactured bottles is part of a continuing manufacturing process. While this may or may not be true, 19 U.S.C. 1313(a) expressly provides that manufactured articles may not be used prior to exportation or destruction. The legislative history qualifies this use prohibition only to the extent that the proscription is "not intended to prevent a manufacturer from testing or other post-production operations." H. Rep. 103–361. In light of the express language of the statute and the legislative history, we believe that, in determining whether an action is a prohibited use of the article, we must consider who performs that action.

The manufacturer in this instance has manufactured bottles from plastic resin. If this manufacturer chose to test or fill the bottle, these actions would be permissible according to the limited exception to the use prohibition discussed in the legislative history. *See* HQ 226898, dated February 10, 1997 (wherein we held that imported glass bottles and related integral parts, such as, caps, collars, pumps and actuators, which were assembled into scent sprayers and filled with perfume by the manufacturer during the assembly process, were eligible for drawback under 19 U.S.C. 1313(a)). However, the manufacturer in the instant case did not continue the processing so as to come within the limitation on the statutory proscription.

One commenter argued that the proposal was in conflict with our decision in C.S.D. 81–65, dated September 4, 1980. In this ruling, pre-labeled, woven, polypropylene bags were filled with tea, peas, beans, grains, etc., and then were sewn shut. These large bags were generally 50 or 100 pounds. We determined that the "sewing shut of one or both ends does not constitute a manufacture or production [under 19 U.S.C. 1313(a)] * * *." The ruling does not discuss whether the bags were used for their intended purpose when filled. Clearly, the bags were so used, as our later holding in C.S.D. 81–222 (discussed above) indicates.

We agree that drawback eligibility is generally not precluded where one entity combines an article manufactured from imported materials with an article manufactured by a second entity from imported materials, except to the extent that the combination of the manufactured articles constitutes an impermissible use of either manufactured article.

Proposed section 191.25(f)(1) was cited by one commenter for the proposition that the drawback statute permits a second entity to continue the manufacturing process of another. In the instant case, the filling company, it is argued, is merely completing the manufacturing process started by the bottle manufacturer. As stated above, we do not believe such an action is permissible under section 1313(a).

Proposed section 191.25(f)(1) provides that "[m]ultiple claimants may file for [manufacturing] drawback with respect to the same export **(for example, a chemical is exported in a container, where the chemical and the container have been produced by different manufacturers under drawback conditions)** (emphasis added)." Proposed section 191.25(f)(1) is a Notice of Proposed Rulemaking (NPRM) which was published January 21, 1997, with proper notice-and-comment procedures under the Administrative Procedure Act (APA) (5 U.S.C. 551–559). *See* 62 FR 3082. One commenter correctly pointed out that the holding in proposed HQ 227276 is inconsistent with the emphasized portion of proposed section 191.25(f)(1). The container described in the regulation is used for section 1313(a) and (b) purposes when filled with the chemical.

Proposed section 191.25(f)(1) tracks the language found in 19 CFR 191.62(c), which was in effect prior to the substantive amendments to the drawback law (section 632, title VI—Customs Modernization, Public Law 103–182, the North American Free Trade Agreement Implementation Act (107 Stat. 2057), enacted December 8, 1993). These amendments, in part, permit "claims under the manufacturing drawback provisions if the articles are de-

stroyed rather than exported * * *, [but require] that the exported articles not be used before exportation or destruction." *See* H. Rep. 103–361. As there was no use prohibition prior to the recent amendments, section 191.62(c) was correct. However, following the amendments, the highlighted portion of the proposed regulation is incorrect and will therefore be deleted. We note that the action described in the highlighted portion of proposed section 191.25(f)(1) may now be covered by 19 U.S.C. 1313(q).

Finally, one commenter states that "[t]he products being placed in these containers can only be marketed to the ultimate consumer at the retail level if placed in a container. In what other fashion would Customs suggest perfume, various liquids and powders be placed in the hands of the public? It is for this reason that ruling 2255658 [sic] should be left in tact [sic]." The holding in HQ 227276 does not prevent products, such as, perfume, liquids, etc., from being placed in the marketplace in any particular fashion. The ruling simply restricts drawback eligibility in accordance with the statute and legislative history.

Holding:

The manufactured bottles are used when filled by someone other than the manufacturer, and therefore, the merchandise is not entitled to drawback under 19 U.S.C. 1313(a). HQ 225658, dated January 17, 1995, is *revoked*.

In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

WILLIAM G. ROSOFF,
Director,
International Trade Compliance Division.

REVOCATION OF RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF SOAPSTONE WOOD-BURNING STOVES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings relating to the tariff classification of soapstone wood-burning stoves. These are unassembled stoves and fireplaces the exterior and interior of which consist of individually cut blocks of soapstone. Notice of the proposed modification was published on March 19, 1997, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after July 7, 1997.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification Appeals Division (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 19, 1997, Customs published a notice in the CUSTOMS BULLETIN, Volume 31, Number 12, proposing to revoke *NY* 811779, dated July 5, 1995, and *HQ* 958353, dated November 2, 1995, which classified the wood-burning stoves made of the mineral talc, commercially known

as soapstone or steatite, as other articles or semiprecious stones, in subheading 7116.20.40, Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in response to this notice. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking *NY* 811779 and *HQ* 958353 to reflect the proper classification of wood-burning stoves of soapstone, as described above, in subheading 6802.99.00, HTSUS, a provision for worked monumental or building stone and articles thereof, other stone. The rate of duty under this provision is 6.5 percent *ad valorem*. *HQ* 960193 revoking *NY* 811779 and *HQ* 958353 is set forth as the Attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: April 21, 1997.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 21, 1997.

CLA–2 RR:TC:MM 960193 JAS
Category: Classification
Tariff No. 6802.99.00

MR. ROLF FREDNER
ROLF FREDNER, INC.
63 Melrose Drive
New Rochelle, NY 10804–4609

Re: *NY* 811779, *HQ* 958353 revoked; wood-burning stove for heating and cooking; unassembled articles made of cut natural stones; soapstone, worked monumental or building stone, fireplace kit; articles of semiprecious stones, Subheading 7116.20.40; Chapter 68, Note 1(d), Note 2; Chapter 71, Note 1.

DEAR MR. FREDNER:

In *NY* 811779, dated July 5, 1995, the Area Director of Customs, New York Seaport, determined that a wood-burning stove of soapstone (steatite) was classifiable in subheading 7116.20.40, Harmonized Tariff Schedule of the United States (HTSUS), as an article of semiprecious stones. This ruling was affirmed by *HQ* 958353, dated November 2, 1995.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of *NY* 811779 and *HQ* 958353 was published on March 19, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 12.

Facts:

The articles under consideration are the OCTO model wood-burning fireplaces of the type used in the home, the exterior and interior of which are of soapstone (steatite). They are shipped unassembled, in kit form, and consist of cut-to-shape pieces of natural stone, wrought iron and glass fire chamber door, grate, ashpan, gauge, and metal clips. The stone blocks are of a talc-based mineral known commercially as steatite or soapstone. The literature states that, in addition to providing a soft gray color and pleasing luster, soapstone is easily customized into a variety of designs and absorbs, retains and radiates heat as well or better than ordinary masonry brick.

The provisions under consideration are as follows:

6802	Worked monumental or building stone * * * and articles thereof * * *:
	Other:
6802.99.00	Other stone * * * 6.5 percent *ad valorem*
* * * * * * *	
7116.20	Articles Of precious or semiprecious stones:
	Other:
	Of precious or semiprecious stones (except rock crystal):
7116.20.40	Other * * * 16.8 percent *ad valorem*

Issue:

Whether a fireplace or stove of soapstone, base metal and glass is a good of heading 7116.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description And Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the **ENs** should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35129 (Aug. 23, 1989).

Subject to certain exceptions not relevant here, all articles consisting wholly or partly of semiprecious stones (natural, synthetic or reconstructed) are to be classified in Chapter 71. *See* Chapter 71, Note 1, HTSUS. Soapstone or steatite, which are commercial designations for the mineral talc, are listed in the Annex to the Explanatory Notes for Chapter 71 and, therefore, are considered semiprecious stones of that chapter. Chapter 68 does not cover articles of Chapter 71. *See* Chapter 68, Note 1(d), HTSUS. Therefore, Customs reasoned that if soapstone (steatite) wood-burning stoves are provided for in heading 7116, or in any other heading of Chapter 71, they must be classified there, and cannot be classified in heading 6802. However, the expression *"worked monumental or building stone"* for purposes of heading 6802 includes steatite, among other types of natural stone. *See* Chapter 68, Note 2, HTSUS. Thus, heading 6802 provides, among other things, for worked monumental or building stone of steatite.

It is now our opinion that if a natural stone of steatite or soapstone qualifies as a worked monumental or building stone of that mineral, it is *not* excluded from Chapter 68. In this regard, relevant **ENs** for heading 6802 state, in part at p. 897, that the heading covers stone which has been further processed than mere shaping into blocks, sheets or slabs by splitting, roughly cutting or squaring, or squaring by sawing. The heading thus covers stone in the forms produced by the stone-mason, sculptor, etc.; for example, stone of any shape, whether or not in the form of finished articles, which has been bossed (i.e., given a "rock faced" finish by smoothing along the edges while leaving rough protuberant faces), dressed with the pick, bushing hammer, or chisel, etc., furrowed with the drag-comb, etc., planed, sand dressed, ground, polished, chamfered, moulded, turned, ornamented, carved, etc.

In this case, the wood-burning stoves in issue are imported unassembled, in kit form, and consist in the main of individual pieces of soapstone of different sizes designed to be assembled together to create the exterior and interior configuration, but in any event processed as described in the cited **ENs.** Accordingly, the merchandise is described by heading 6802.

Holding:

Under the authority of GRI 1, the OCTO model wood-burning fireplaces and stoves are provided for in heading 6802. They are classifiable in subheading 6802.99.00, HTSUS. *NY* 811779, dated July 5, 1995, and *HQ* 958353, dated November 2, 1995, are revoked.

In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

MODIFICATION OF RULING LETTER RELATING TO THE COUNTRY OF ORIGIN MARKING ON THE BOXES OF A PORCELAIN BALLERINA AND A SCULPTSTONE FOX

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of past ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (U.S.C. 1625(c)(1)), as amended by section 623 of Title VI ("Customs Modernization") of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186 (1993)), this notice advises interested parties that Customs is modifying a past ruling concerning the country of origin marking requirements for a "sculptstone" fox figurine and a porcelain ballerina figurine. Notice of the proposed modification was published on March 12, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 11. One comment was received in response to this notice.

EFFECTIVE DATE: This decision is effective for merchandise entered, or withdrawn from warehouse, for consumption on or after July 7, 1997.

FOR FURTHER INFORMATION CONTACT: Keith B. Rudich, Special Classification and Marking Branch, (202) 482–6980.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 12, 1997, Customs published a notice in the CUSTOMS BULLETIN, Volume 31, Number 11, proposing to modify New York Ruling Letter (NYRL) 812669 dated August 7, 1995, pertaining to country of origin marking requirements for an imported "sculptstone" fox figurine and a porcelain ballerina figurine.

Customs ruled in NYRL 812669 that the country of origin markings appearing on the bottom of the boxes of the porcelain ballerina and the "sculptstone" fox figurines were not in a conspicuous location as required by the country of origin marking statute (19 U.S.C. 1304). Further, the ruling found that the marking on the box of the sculptstone fox figurine which stated "North American Wildlife" in large letters vio-

lated the requirements of Customs Regulations section 134.46 (19 CFR § 134.46). However, upon further review of the facts of the case, Customs has determined that in view of the conspicuous country of origin marking on the bottom of the figurines themselves and, since the figurines are delivered in unsealed boxes, the marking on the boxes does not violate section 1304; and in view of the markings on both the figurines and the boxes, the statement, "North American Wildlife", appearing on the bottom of the box containing the sculptstone fox figurine, does not trigger the requirements of 19 CFR § 134.46 because the ultimate purchaser would not confuse this as information concerning the origin of the figurine. This phrase clearly refers to the fox's habitat rather than where the figurine was made.

One comment was received in response to this notice. The comment was submitted by the party to whom NYRL 812669 was addressed and presented a situation which differs from the facts and samples originally submitted to Customs. This modification is issued only in regard to the factual situation and samples originally presented to Customs. The commenter may submit a new ruling request involving new facts and new samples without prejudice.

Accordingly, Customs in modifying NYRL 812669 by finding that the country of origin markings for the porcelain ballerina and the sculptstone fox satisfy the country of origin marking requirements.

Pursuant to section 625(c)(1), Tariff Act of 1930 (U.S.C. 1625(c)(1)), as amended by section 623 or Title VI ("Customs Modernization") of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186 (1993)), this notice advises interested parties that Customs is modifying NYRL 812669. A copy of the ruling letter modifying NYRL 812669 is set forth in the attachment to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change in practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: April 21, 1991.

SANDRA L. GETHERS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 21, 1997.

MAR 2–05 RR:TC:SM 559525 KBR
Category: Marking

ARLEN T. EPSTEIN
SERKO & SIMON
One World Trade Center, Suite 3371
New York, NY 10048

Re: Country of origin marking on a porcelain ballerina figurine and a sculptstone for figurine; containers;. cardboard box; Marking Exception; 19 CFR 134.46; 19 CFR 134.82(d); 19 CFR 134.36(b); Modification.

DEAR MR. EPSTEIN:

This is in reference to your letters of October 23, 1995, and October 26, 1995, requesting reconsideration of New York Ruling Letter (NYRL) 812669 dated August 7, 1995, on behalf of Russ Berrie and Company Inc., concerning the country of origin markings on a porcelain ballerina figurine and a sculptstone fox and their containers. A sample of each was submitted with your request.

Facts:

Russ Berrie and Company, Inc., is the importer of porcelain ballerina figurines and "sculptstone" fox figurines. The ballerina figurine is approximately 7¼ inches high. The ballerina figurine has an adhesive label on the bottom which has the importer's name, the brand name, the item number and the country of origin marking "Made in China". The ballerina figurine is packaged in an unsealed cardboard box. The top flap of the box states the name of the figurine:

At The Ballet™
Porcelain Collectible Figurine

The bottom flap of the box again states the name of the figurine as above, plus gives the item number, the brand name, the importer's name and address in the U.S. (Oakland, New Jersey) and the country of origin, "Made in China". The printing of the importer's address and the country of origin are of equal size.

The fox figurine is approximately 5 inches wide and 4 inches high and depicts a fox and cub sitting on a base. The bottom of the base gives a description of the fox which states:

RED FOX (Vulpes vulpes)

The red fox is a member of the dog family. Handsome, yet vicious at times, this generally nocturnal animal is found in Europe, Asia and North America. The adult fox is approximately 14 inches high at the shoulder. They live on the ground, but are also known to climb trees. Their main food source is rodent, but they also feed on birds, frogs and select plant life.

RUSS®

ITEM NO. 14653

©Russ Berrie and Company, Inc.
Oakland, New Jersey
Made in Indonesia

REG. NUMBER LA 2037

The fox figurine is packaged in an unsealed cardboard box. The bottom of the box has an adhesive label which states:

THE NORTH AMERICAN
WILDLIFE COLLECTION™
Collectible Figurine
RED FOX AND CUB

RUSS®
©Russ Berrie and Company, Inc.
Oakland, New Jersey
Item No. 14653
Item: Made in Indonesia
Box: Printed in Taiwan, R.O.C.

You state that both the ballerina figurine and the fox figurine will only be sold in these retail boxes.

In NYRL 812669, Customs found that the country of origin marking placed on the bottom of the boxes of both the figurines was not a conspicuous location as required by Customs. Further, the New York Ruling found that the statement on the fox figurine's box "NORTH AMERICAN WILDLIFE COLLECTION" triggered the requirements of Customs Regulations section 134.46 (19 CFR § 134.46). This would require that the country of origin appear in the same size print as the statement containing the location other than the country of origin.

Issues:

1. Whether the country of origin marking on the bottom of the boxes of the porcelain ballerina figurine and the sculptstone fox figurine is in a conspicuous location.

2. Whether the statement "THE NORTH AMERICAN WILDLIFE COLLECTION" triggers the requirements of 19 CFR § 134.46.

Law and Analysis:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the *U.S. shall* be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C 1304.

Pursuant to 19 U.S.C. 1304(a)(3)(D) and section 134.32(d), Customs Regulations {19 CFR 134.32(d)}, an exception from individual marking is applicable where the marking of the container of an imported article will reasonably indicate the origin of the article. This exception is normally applied in cases where the imported article is imported in a properly marked container and Customs officials at the port of entry are satisfied that the ultimate purchaser in the U.S. will receive it in its original marked container. However, if the ultimate purchaser is able and likely to view the article itself, even if the article is placed inside a container, there is no requirement that the container must also be marked with the country of origin.

In NYRL 812669, it was determined that the bottom of the box was not a conspicuous location for the country of origin. While Customs has ruled that the bottom of a box is generally not a conspicuous location *(see e.g.* HQ 734693 (October 30, 1992); HQ 732917 (May 11, 1990); HQ 732870 (March 19, 1990)), we do not find that under the circumstances in this case such marking violates section 1304. The bottom of a figurine such as the ballerina or fox is a conspicuous location for country of origin marking, so as not to detract from the beauty of the figurine. *See e.g.* HQ 558784 (November 4, 1994); HQ 733728 November 21, 1990). Since the article itself is marked in a conspicuous location, and since the ultimate purchaser likely will remove the article from the unsealed box to see precisely what the article looks like and that it is not damaged, we find that the article is appropriately marked with its country of origin.

In NYRL 812669, it also was determined that the reference "THE NORTH AMERICAN WILDLIFE COLLECTION" on the bottom of the box containing the fox figurine invoked 19 CFR § 134.46, which requires that, in cases where the name of a location other than the country in which the article was produced appears on the article or its container, there shall appear, legibly and permanently, in close proximity to such words, letters, or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning. Therefore, NYRL 812669 held that the county of origin marking "Made in Indonesia" must appear in equal size print to that of "THE NORTH AMERICAN WILDLIFE COLLECTION".

Customs has consistently held that in those cases in which a reference to a place other than the country of origin is made on an imported article, but such reference would not confuse the ultimate purchaser, the requirements of 19 CFR § 134.46 are not triggered. Furthermore, Customs has determined that the special requirements of 19 CFR

§ 134.36(b) should not be applied automatically to all imported articles or their containers which bear a non-origin geographical reference. Section 134.36(b), Customs Regulations (19 CFR § 134.36(b)), states that an exception from marking shall not apply to any article or retail container bearing any words, letters, names, or symbols described in section 134.46 which imply that an article was made in a country other than the actual country of origin.

In HQ 782412 (August 29, 1989), Customs found that the placement or the word "Kansas" on different parts of imported jeans did not trigger the requirements of 19 CFR § 134.46 because such marking was used as a symbol or decoration and would not reasonably be construed as indicating the origin of the article on which it appeared. Likewise, in HQ 733695 (January 15, 1991), women's trousers with metal rivets die-stamped with the words "Bonjour Paris", and containing a fabric label sewn into the waistband indicating the country of origin as Hong Kong, were not subject to the requirements of 19 CFR § 134.46 since the rivets were decoration on the garment and an integral part of the design. However, in HQ 732486 (September 5, 1989), a label, crest, and hangtag containing the words "Riviera Line" were attached to imported garments. The hangtag contained a picture of a cruise ship in the center with two articles around the ship. Below the ship in large bold lettering was the phrase "RIVIERA LINE." The crest had a large script letter "R" in the center surrounded by a crest with the word "RIVIERA" below the letter "R." It was determined that while the crest was part of the design of the garment, the hangtag with the phrase "Riviera Line" triggered the special marking requirements of 19 CFR § 134.46; therefore, the hangtag had to contain the country of origin printed in a conspicuous manner and placed in close proximity to the phrase "Riviera Line." The rationale was that a locality other than the country of origin is more likely to cause confusion when it appears on a hangtag attached to a garment because a hangtag is designed to attract the attention of the purchaser and generally contains information about the article. As such, a reference on the hangtag to a locality other than the country of origin of the article to which it is attached was potentially misleading with regard to the garment's country of origin.

In HQ 559267 (October 20, 1995), Customs found that a canister containing the phrase "By Appointment to His Majesty The King of Sweden," did not trigger the requirements of 19 CFR § 134.46. Customs found that the ultimate purchaser of the coffee and coffee canisters should understand that "By Appointment to His Majesty The King of Sweden" referred to the Gevalia coffee and not to the canister. Customs stated that the ultimate purchaser would not confuse the reference to the King of Sweden as any information concerning the origin of the canister. Specifically Customs stated that "[s]ince the purpose of 19 CFR § 134.46 is to prevent the ultimate purchaser from being confined as to the country of origin of a product, we conclude that the reference to the King of Sweden does not invoke the requirements 19 CFR § 134.46."

We find that this case involves a situation similar to that in HQ 559267 (October 20, 1995). We do not believe anyone will be confused as to the country of origin of the fox figurine. In our opinion, the ultimate purchaser will know that the phrase "NORTH AMERICAN WILDLIFE COLLECTION" refers to the fox's habitat rather than where the figurine is created.

Although not addressed in NY 812669, we note that the importer's address (Oakland, CA) appearing on both boxes and on the bottom of the fox figurine triggers the requirements of 19 CFR § 134.46. However, since the country of origin marking appears in close proximity to these statements, in equal size print, preceded by the words "Made in", we find that the requirements of 19 CFR § 134.46 are satisfied.

Holding:

Based upon the information provided, it is our opinion that the bottom of the figurine itself is a conspicuous location for the country of origin marking for both the ballerina figurine and the fox figurine and that under the circumstances of this case, marking on the bottom of the retail boxes does not violate section 1304. Further, we find that the requirements of 19 CFR § 134.46 are not triggered by the statement, "NORTH AMERICAN WILDLIFE COLLECTION", and the requirements of 19 CFR § 134.46 are satisfied as to the reference to Oakland, CA on both boxes and on the bottom of the fox figurine.

Therefore, NYRL 812669 (August 7, 1995) is modified accordingly.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

SANDRA L. GETHERS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 142

RIN 1515–AB27

PUBLICATION OF ENTRY FILER CODES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to provide for the annual publication by electronic means of the code assigned by Customs to identify frequent entry filers. This proposal is consistent with the efforts to modernize the Customs Service and the documentation related to imports. The proposal will assist components of the trade industry in controlling import transactions and in serving their clients among the importing public. It is anticipated that, if promulgated as a final rule, the proposal will reduce the paperwork burden on the affected public and the administrative burden on the Customs Service.

DATES: Comments must be received on or before June 23, 1997.

ADDRESSS: Comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW, Washington, D.C. 20229, and may be inspected at Franklin Court, 1099 14th Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ray Janiszewski, Office of Trade Compliance, (202) 927–0365 (Operational matters), or Paul Hegland, Entry and Carrier Rulings Branch, Office of Regulations and Rulings, (202) 482–7040 (Legal matters).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Generally, all merchandise brought into the United States is required to be "entered", unless specifically excepted from entry. The entry process consists of the importer of record, using reasonable care: (1) filing with Customs the documentation necessary for Customs to determine whether the merchandise may be released from Customs custody ("an entry") and (2) completing the entry by filing the declared value, classification and rate of duty applicable to the merchandise, and such other information or documentation as is necessary to enable Customs to properly assess duties on the merchandise, collect accurate statistics with regard to the merchandise, and determine whether any other ap-

plicable requirement of the law is met ("an entry summary"). Generally, an entry is required within 5 working days after the arrival of the importing conveyance. The person making entry (by filing the required documentation) is required by law to be the owner or purchaser of the merchandise or, if appropriately designated by the owner, purchaser, or consignee of the merchandise, a licensed customs broker.

As a part of its Automated Commercial System (ACS), Customs assigns a unique 3 character (alphabetic, numeric, or alpha numeric) entry filer code to all licensed broker companies filing Customs entries and to certain other importers filing Customs entries, based on the volume and frequency of filing and other considerations. These entry filer codes are not assigned to intermittent importers, who obtain from Customs forms with Customs-assigned pre-printed entry numbers. The entry filer is required to place the filer code, along with a unique (to each entry) number and a check digit on each entry. This entry number (consisting of 11 characters) is used by Customs and the importer to identify the particular entry. This procedure of assigning entry filer codes was implemented in the Customs Regulations (see 19 CFR 142.3a) by Treasury Decision (T.D.) 86–106, published in the Federal Register on May 28, 1986 (51 FR 19166).

Entries of merchandise are reviewed by Customs. Under the law, Customs is responsible for fixing the final appraisement of the merchandise and the determination of applicable duty and admissibility. "Liquidation" is the final determination by Customs on the dutiability and admissibility of imported merchandise. Customs is required by law to give notice of liquidation to the importer, his consignee, or agent, as prescribed by regulations. The pertinent regulations require this notice to be made on a bulletin notice of liquidation, Customs Form 4333 (19 CFR 159.9).

The importer of record is named on the bulletin notice of liquidation for each entry (the entry is listed by number). As noted above, after the implementation in the Customs Regulations in 1986 of Customs procedures for the assignment of entry filer codes, the entry filer code in each entry identifies the entry filer.

On January 13, 1993, in a document published in the Federal Register (58 FR 4113), Customs announced in an Advance Notice of Proposed Rulemaking (ANPRM) that it was considering the amendment of the Customs Regulations to provide for the publication of a list of filer codes and the identity of the individuals, licensed Customs brokers, or importers assigned the specific filer codes. Customs stated that this action would improve control for various components of the trade community and reduce numerous questions and problems for Customs relating to entry processing requirements. Customs noted that publication of the filer codes with the persons assigned the codes might be considered to provide a means for the public to gain access to commercial information regarding import transactions which Customs had heretofore treated as confidential. This publication of filer codes will also enable brokers to identify those importers who are not using their services.

REVISED POLICY REGARDING CONFIDENTIAL TREATMENT

The Advance Notice of Proposed Rulemaking solicited comments. Twenty letters were received, many of them setting forth similar comments. Several of the comments received addressed Customs policy providing for confidentiality of filer codes as set forth in T.D 88–38. The comments have caused Customs to review and examine this policy. This review has led Customs to revise its position so that the current position that Customs holds is that filer code information should be considered public information. Customs has reached this determination after a comprehensive review of the overall operational situation in the commercial environment. In this review, Customs found that in spite of its attempts to protect the identities of importers, there were many instances where this effort had been compromised and the identities of importers and their filer codes are readily available to those who might be seeking such information. Because of the general availability of this information in the commercial arena, Customs does not believe that a continuation of its efforts to treat the information as confidential is either necessary or warranted. Customs believes that the comments received from brokers and carriers indicate that the benefits claimed by giving broader dissemination of the information support the proposal to publish the filer codes. Customs believes that the concerns expressed by commenters in regard to the need to treat filer code information as confidential are not warranted. Because of this policy determination, it is Customs intention to revoke that portion of T.D. 88-38 which provides for confidential treatment of filer codes upon the request of an importer if the accompanying proposed rule is finalized.

DISCUSSION OF COMMENTS

The following is a summary discussion of additional comments which were received by Customs in response to the advanced notice of Proposed Rulemaking, and Customs response to those comments.

Comment:

The Customs brokers and the brokers association who commented supported the proposal, stating that identifying filers with filer codes would assist brokers in helping members of the public who use multiple brokers and in re-routing documentation and inquiries which have been incorrectly routed. One of these commenters suggested that publication should be through Customs Automated Commercial System (ACS), with provision made for release of the information to those who do not have access to ACS by Freedom of Information Act request. this commenter suggested this means of publication in lieu of publication in the Customs Bulletin.

Response:

Customs agrees with the reasons given for support of the proposal, as consistent with the reasons given in the advance notice. As for the suggestion on the means of publication of the filer code information, there is not currently a program supported in acs for such publication. consideration will be given to developing such a capability in ACS if suf-

ficient interest is shown. For the present, Customs is proposing publication of the filer code information on the CuStoms Electronic Bulletin Board.

Comment:

The carriers and carrier associations who commented supported the proposal. One reason given for support was that carriers need this information to assist in the cargo release process (i.e., carriers could clear up discrepancies much more rapidly if they could more easily identify the parties involved). Another reason was that the information provided under the proposal would enable carriers to complete the manifest requirements, particularly carriers who are a part of Customs Automated Manifest System (AMS) (i.e., in that a carrier could more easily identify and contact a filer in the event of a discrepancy).

Response:

Customs agrees. This is consistent with the reasons given for the proposal in the advance notice.

Comment:

The sureties and surety associations who commented supported the proposal, on the basis that it will help automation and would enable sureties to more efficiently contact "brokers of record" in the event of discrepancies.

Response:

Customs agrees. This is consistent with the reasons given for the proposal in the advance notice.

Comment:

A trade association supported the proposal, on the basis that it would contribute significantly to the simplification of U.S. trade documentation.

Response:

Customs agrees. This is consistent with the reasons given for the proposal in the advance notice.

Comment:

A government agency supported the proposal, on the basis that it could use the information which would be provided under the proposal to obtain the status of a filer's entry and to communicate with the filer.

Response:

Customs agrees. This is consistent with the reasons given for the proposal in the advance notice.

Comment:

An association representing customs bonded warehouses supported the proposal, on the basis that it would help warehouse proprietors to supply missing information or correct errors and to avoid liquidated damages on warehouse custodial bonds. On the issue of confidentiality, the commenter stated that it sees no difference between the proposed publication and that of the names of operators of bonded warehouses.

Response:

Customs agrees with the reasons given for support of the proposal, as being consistent with the reasons given for the proposal in the advance notice. Customs has addressed that portion of the comment concerning confidentiality earlier in this document.

Comment:

Three trade or industry associations either conditionally supported the proposal or did not object to it, provided that filers who desired confidentiality could request it. The commenters suggested the use of a procedure similar to the provision requesting confidential treatment of manifest information in 19 CFR 103.14(d). The reason given by one of these associations for its conditional support of the proposal was that it would facilitate movement of cargo and could reduce costs.

Response:

Customs agrees with the reason given for support of the proposal, as being consistent with the reasons given for the proposal in the advance notice. As to the suggestion that filers who desired confidentiality should be able to request such treatment, similar to the provision for parties requesting confidential treatment of manifest information, Customs finds this suggestion to be without merit. it is Customs position that the filer codes are public information and, as such, cannot be accorded confidential treatment.

Comment:

Three importers either opposed the proposal or suggested that its implementation be delayed. The reasons given for opposition to, or the delay of, the proposal were that the proposal would result in the disclosure of confidential business information and that no good reason was given for the proposal.

Response:

Customs believes that good reasons were given in the advance notice for this proposal, and that the reasons set forth in comments received from Customs brokers, carriers and sureties supporting the proposal provide further support for the proposal. Regarding the confidentiality issue, as indicated above, Customs believes that the filer code information is not confidential.

Proposal

After reviewing the comments to the ANPRM and further consideration, Customs has determined to proceed with the proposal to amend the regulations to provide for the annual publication of the identity of the code assigned by Customs to identify frequent entry filers on the Customs Electronic Bulletin Board, without providing for confidential treatment of filer identity.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. Comments submitted will be available for public inspec-

tion in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the regulations branch, U.S. Customs Service, Franklin Court, Suite 4000, 1099 14th Street, NW, Washington, D.C.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

REGULATORY FLEXIBILITY ANALYSIS

Because adoption of the proposed amendment will improve access to frequently needed information for the commercial community without any action on its part, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.),* it is certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

LIST OF SUBJECTS IN 19 CFR PART 142

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

PROPOSED AMENDMENT

It is proposed to amend Part 142, Customs Regulations (19 CFR Part 142), as set forth below:

PART 142—ENTRY PROCESS

1. The authority citation for Part 142, Customs Regulations (19 CFR Part 142), continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to amend § 142.3a by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), Respectively, and by adding a new paragraph (c) to read as follows:

§ 142.3a Entry numbers.

* * * * * * *

(C) *Publication of entry filer codes.* The Customs Service shall make available annually by Electronic means on the Customs Electronic Bulletin Board a listing of filer codes and the importers, consignees, and Customs brokers assigned those filer codes.

* * * * * * *

GEORGE J. WEISE,
Commissioner of Customs.

Approved: November 22, 1996.
Dennis M. O'CONNELL,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, April 22, 1997 (62 FR 19534)]

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